

# Alert and Warning Legal, Liability, and Funding Issues Work Team

## Priority Topic Areas

Thursday, August 21, 2008  
1:30-4:30

Priority Item	Comments/Discussion		
Topic: Legal/Liability Issues			
Responsibility of government to alert	What is the current status of legal authority?		
	Discussion:		
	<ul style="list-style-type: none"><li>• No legal mandate to warn.</li><li>• Enabled to do warning (for example at the CC county level)</li><li>• There are implications / indirectly (ex. CPUC)</li><li>• What is the measure of success? Info. Transfer, improved outcomes?</li><li>• Need to address on the legal plane and maybe ethical plane</li><li>• There is a federal requirement to issue a statutory warning on nuclear site jurisdiction</li><li>• At a government level, what happens if gov. doesn't take action to issue warning? There is a liability to inform the public in a timely manner. Should liability also include "ability?"</li><li>• Is responsibility a different issue than authority? Will the responsibility become an expectation? Using private partnerships can become complicated. We should push the information out so that the public is informed.</li><li>• Refineries in Contra Costa County have to notify county health services. Responsibility is different in various jurisdictions and often complicated</li><li>• There is a public expectation for government to provide warnings</li><li>• (Action Steps) Survey legal status of case law information<ul style="list-style-type: none"><li>○ Public expectation to receive alerts → miscue with facts now action: 0</li><li>○ Extend protections to statute for A/W. Fear of potential liability. Timely notification is at risk "holding back"</li><li>○ Standard of Practice Guidance based on best practices/stakeholder based attribution/verification</li><li>○ A/W new component of statewide mutual aid and include in SEP rewrite</li></ul></li><li>• The difference between public expectation and actual authority</li><li>• Consider matrix that identifies local, state, federal government, private. These groups would be in three groups – Authority, Response, Capability.</li></ul>		
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**Comment [js1]:** Govt. and private sector (all "agent" At&t/other

		from procedures and process are adequate	
State			
Federal			
Private			
	<ul style="list-style-type: none"> <li>• What do you mean by responsibility? Private? Public? Government?</li> <li>• Are we talking about the act of issuing a warning or the infrastructure that goes along with issuing a warning</li> <li>• What is the legal resp. given the case law?</li> <li>• State OES document on legal actions for evacuations.</li> <li>• Include legislature intention and expectation. The expectation is that there will be case law – responsibility, and include the public involvement in this language.</li> <li>• There is a disconnect between what the public believes is there and should be there</li> <li>• It would be a good expression of policy to encourage that when others are aware of hazards – share this information with others. This would be across the board...cell phone companies, etc.</li> <li>• Do current good Samaritan law allow people to provide information? Not sure about this – need to check on it.</li> <li>• What are the indentifying problems/issues? Authority has not been an issue. Each agency has a role and they know their role. The question should be, ‘when does the call get made to “through the switch” and is this done in a timely manner?’</li> <li>• What is the ability to translate a message with its source? Insure that each message could be traced back to its source. This will help eliminate false messages. This will not eliminate who is “authorized” to issue the warning</li> <li>• There should not be only one group of people that are allowed to initiate the warning.</li> <li>• California fires are a good example of warnings to look at</li> <li>• Use similar tariff as used by ATT and Verizon</li> <li>• Don’t want the telecommunication providers to sell telecommunication warnings</li> <li>• The liability should not affect the alert getting out</li> <li>• Government agencies don’t want to send out warning because of repercussions. Litigation can stop the process of issuing warnings</li> <li>• False precision. Why is 24-hour timeframe assumed “reasonable” for issuing a warning advisement?</li> <li>• The idea of creating explicit warning system could help reduce the fear of people issuing warnings</li> <li>• Explicit liability shield should include general principles such as “good faith” effort, properly sourced; and a standards of practice guidance document based on best practices</li> <li>• FEMA site has a page on what makes a good faith message</li> <li>• Standards and Practice should include a body of knowledge from</li> </ul>		

	<p>the last 50 years</p> <ul style="list-style-type: none"> <li>• TORT law provides coverage for the failure to provide information that one already has</li> <li>• The NRC requires informing people when something is happening, even if not definite of what the emergency is</li> <li>• Choosing to disclose information should not translate to a penalty.</li> <li>• There should be limits on the liability. If people are doing good faith – then they should not be reprimanded</li> <li>• Public Expectation: Facts in the Field vs Government Regulation... "driver be aware." Keep good standards of practice, move forward with the processes that are already in place</li> <li>• Release of Liability: California Lawyers Association will always appear in relation to this topic of release of liability.</li> <li>• How did the Good Samaritan law get passed? This law is very limited and doesn't apply to everyone.</li> <li>• Using AW law should be very narrow and specific – don't make it too broad – this will open us up for litigation</li> <li>• There should be some relief for the carriers so that they will want to participate</li> <li>• When issuing a warning there needs to be attribution. There should be traceable of who issued the warning. Needs to be explicit in the Liability Shield</li> <li>• If we use wireless capability to send out notifications – then these carriers will need to adhere to the same regulations that we have in place for all the other agencies</li> <li>• Removal of Barriers: this is adequate and understood.</li> <li>• There needs to be a balance between input and consistency</li> <li>• There should be multiple alternatives of standards</li> <li>• There is a slough of multiple agency regulations that are a subset to what we are discussing here today.</li> </ul>
"Good Samaritan" liability limitation	"Good Samaritan" liability limitation for officials and private individuals that issue warnings.
Standard of Practice	Standard of Practice: What are the conditions that justify a warning? What considerations, if any, justify withholding warning information?
	Liability risk should be minimal if authorized message initiators follow standards
Liability protection for network operators	Communications carriers could have liability issues when managing network in emergency situations with already-large call volumes. Accommodating bursts of notification calls impacts network performance

Third-party vendors and liability	Coordination with network carriers required. Currently there is no oversight of notification vendors operating in California. There are no minimum performance standards.
<b>Topic: Funding Issues</b>	
Funding Availability	What funds are currently used to support local alert and warning systems? Homeland Security Grants? State options? TENS grants, Governor's Office of Homeland Security?
	Identifying a permanent source of funding
EDIS funding	<p>If EDIS is going to be part of a statewide system, there needs to be a permanent funding stream or at least a line item in OES' budget.</p> <ul style="list-style-type: none"> <li>• Infrastructure</li> <li>• Need money</li> <li>• OES should supply modest support</li> <li>• BCP?</li> <li>• Mutual Aid tool</li> <li>• CA has history of state providing infrastructure backbone at the state level that local government can piggy back on.</li> <li>• Strongly encourage state leg to create state level support/infrastructure that can be infused at the local level</li> <li>• This system is an existing backbone that needs maintenance</li> <li>• Support EDIS <ul style="list-style-type: none"> <li>○ Market it (local emerg. mang. local broadcasters, general public) Need to beware of self-promotion – don't want to compete with private sector</li> <li>○ Staff it</li> <li>○ Enhance it</li> <li>○ Maintain it</li> </ul> </li> <li>• (GAP): Many locals rely on EDIS or have nothing</li> <li>• (GAP): In state mutual aid system <ul style="list-style-type: none"> <li>○ There is a system of governance</li> </ul> </li> <li>• Statewide Emergency Plan – consider including AW (that is currently under revision)</li> <li>•</li> </ul>
Other (Public, Governance)	<ul style="list-style-type: none"> <li>○ Funding for education</li> <li>○ Education, stakeholders, public</li> <li>○ Governance – staff money</li> </ul>

	<ul style="list-style-type: none"> <li>○</li> </ul>
Local	<p>How to initiate funding in the case of an emergency</p> <ul style="list-style-type: none"> <li>• Trying to diffuse spending money that we don't have</li> <li>• Looking for mutual aid agreements. Everyone funds their own programs (i.e. a new developer came into a flood prone area; the developer agreed to fund prep work to cover levee break)</li> <li>• Pulling from mutual aid system model that has been used in other systems. Applying the mutual aid principles</li> <li>• Private sector partnerships are an asset</li> </ul>
<b>Topic: Statutory Issues</b>	
Basis for "Partnership"	<p>Can Partnership (governance) be created by Executive Order if Legislation is not an option?</p> <ul style="list-style-type: none"> <li>○ Model after SEMS <ul style="list-style-type: none"> <li>○ Report is addressing this</li> </ul> </li> <li>○ The governance group should be created through legislation <ul style="list-style-type: none"> <li>○</li> </ul> </li> </ul>
	<p>There is a group of actors – no rules – what would happen?</p> <p>-How do we define the actors and the rules?</p> <p>-How do they interface with one another?</p> <p>-What are the performance standards that vendors adhere to?</p> <p>-When local gov spends money for regulation, the use of the state should be to provide some structure for private industry</p> <p>-Vendors need to be held accountable</p> <p>-Have state-by-state regulation of vendors (many vendors are not located in CA)</p> <p>-Work at a federal level for regulation</p> <p>-If regulation requires vendor to provide something and they don't, local should then have authority to impose regulation within that jurisdiction</p> <p><b>(Action Step)</b> On going communication with national and industry organizations would be a function of the governance structure and may result in legislative initiatives or statewide standards</p> <p>-If going to use state funding – then vendors need to meet standards</p>
<b>Topic:</b>	

**Comment [js2]:** Will need to look at the best way to address this topic. This is a best practices issue. Will need to research this topic.

### **"Discussion" Items**

	Carriers such as AT&T and Verizon can file tariffs with the CPUC containing additional language regarding liability with notification calls
<b>Next Steps</b>	<p>CCP will send notes from today's meeting out to group</p> <ul style="list-style-type: none"> <li>-will merge the results of today into the overall report</li> <li>-Use track changes when sending out document to group members</li> <li>-Will get AG office feedback on discussion that has taken place.</li> </ul> <p>Do we need a next meeting?</p> <p>Tentative date: (will meet if Eileen feels she needs clarification)</p> <p>By Aug. 27, send revisions to Eileen</p>